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DEPARTMENT OF STATE



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 BROAD STREET NEWARK 2, N. J.

DOMINIC A. CAVICCHIA
DIRECTOR

September 27, 1953

ADDRESS REPLY TO
DIRECTOR OF
ALCOHOLIC BEVERAGE CONTROL
AND REFER TO

DEPARTMENT OF STATE
REVIEWED BY [Signature] DATE 9-28-53
RDS ☐ OF XDS ☐ EXT: DATE _____
TS AUTH: _____ REASON: ()
ENDORSE EXISTING INSTRUMENTS ☐
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RELEASE ☐
PA 6-101 EXEMPTIONS

Mr. Charles I. Bevans
Assistant for Treaty Affairs
Office of the Legal Adviser
Department of State
Washington, D. C.

Dear Sir:

Re: Your File L/T

We have your letter of September 21st in reply to ours of August 20th regarding the Japanese treaty which is presently awaiting the exchange of instruments of ratification.

We note that your Department "considers that, under the provisions of paragraph 1 of Article VII of the treaty with Japan, Japanese nationals have the right to engage in the liquor business in the United States on the same basis as United States nationals."

Thanking you for your cooperation, we are,

Very truly yours,

DOMINIC A. CAVICCHIA
Director

By: John H. Michelson
John H. Michelson
Deputy Director



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PC/R 611.944/9-2753
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FOREIGN SERVICE DESPATCH

FROM : AMEMBASSY, Tokyo

DESP. NO. 573

TO : THE DEPARTMENT OF STATE, WASHINGTON.

September 29, 1953

REF :

DATE

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	DC/R-2 Rep-1 FE-4 E-4 Old-6 VO-1 Cia-5 Com-8 Jwa-1	

SUBJECT: "Professions Clause" in Treaty of Friendship, Commerce and Navigation with Japan.

This Document Must Be Returned To

611.944/9-2953

1. Enclosed for the Department's information is a copy of a preliminary memorandum prepared by Mr. James B. Anderson, American attorney in Japan, advocating the admission of a Japanese lawyer to the bar of the District of Columbia. Mr. Anderson is a member of an informal group of lawyers in Tokyo which believes that the U.S. Senate's reservation to the FCN Treaty with Japan does not prevent the application of the "Professions Clause" in areas under federal jurisdiction. This group is prepared to sponsor the application of a Japanese lawyer and doctor for admission to practice in the District of Columbia. If successful in the move American doctors and lawyers, and other American professionals in Japan will then seek to obtain licenses in the District of Columbia in order to come within the terms of the reservations for practice in Japan and thus remove any doubt as to their eligibility. There has been no indication from official Japanese sources that any restrictions the Japanese may impose under the reservations will be applied retroactively. The Embassy is prepared to contend, however, if need be, that with respect to Americans licensed in Japan any retroactive application of the reservation will have the effect of depriving them of property rights without due process.

2. The enclosed memorandum is intended to serve as a basis for the preparation of a legal brief to the Attorney General of the United States seeking his opinion that under the Treaty of Friendship, Commerce and Navigation with Japan, Japanese lawyers, otherwise qualified, may be admitted to practice their profession in the District of Columbia, Hawaii and Alaska and other areas

1. James B. Anderson.

Born February 16, 1912. Williams College, A.B., 1933; Harvard University, LL.B., 1936; admitted to New York State Bar, 1937; associated with Breed, Abbott and Morgan, 15 Broad Street, New York City, 1936-52 (Manila Office, 1947-51); U.S. Army, 1941-46; admitted to practice as a foreign lawyer in Japan, 1952; member Tokyo Bar Association, Association of the Bar of the City of New York, New York State Bar Association.

J Bassin/dc

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OCT-6 1953
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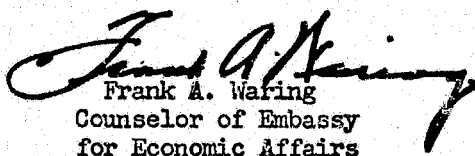
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under federal jurisdiction. Mr. Ben Bruce Blakeney, 2./ also an American lawyer practicing in Japan, expects to be in Washington on October 2, 1953 to present these views personally to the officers concerned in the Departments of State and Justice in an effort to secure a favorable administrative decision to be used to gain admission of a Japanese lawyer (as yet unpicked) to the District of Columbia Bar. In the event Mr. Blakeney is unsuccessful in securing a favorable administrative ruling, he has intimated to the reporting officer that he may test the scope and extent of the reservation by court proceedings. He is not at all certain at this time whether he will seek judicial relief or just how he will go about doing it. Presumably he could act as counsel for a Japanese lawyer or doctor seeking admission to practice in the District of Columbia. He realizes, however, that there are many practical difficulties involved in seeking judicial relief and for that reason it is believed that he may not resort to court action unless it appears that the Japanese intend to restrict the activities of those American professionals presently licensed in Japan.

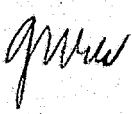
For the Ambassador:


Frank A. Waring
Counselor of Embassy
for Economic Affairs

Enclosure: 

✓ Memorandum of August 31 from
Mr. James B. Anderson

2./ Born 1908. University of Oklahoma, A.B., 1929; Sorbonne, Harvard Law School, LL.B., 1932. Admitted to Supreme Court of Oklahoma, Supreme Court of the United States, Supreme Court of Japan. Army Air Force, 1942-46; Defense Counsel and Chairman of Defense Counsel, International Military Tribunal for the Far East, Tokyo, 1946-48; Chief of Defense for Admiral Toyoda, Tokyo, 1948-49. Of counsel, war-crimes trials at Manus Island, 1950-51. Lecturer on American Law, Tokyo University, Chuo University, and Keio University, Tokyo. Author of numerous books and magazine articles on law. Bar associations: Oklahoma State, American, First Tokyo. Associate, Tosaku Baba, LL.B, Tokyo University, 1932.


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MEMORANDUM AS TO BRIEF TO BE PREPARED IN SUPPORT
OF APPLICATION FOR ADMISSION OF A JAPANESE LAWYER
TO THE BAR OF THE DISTRICT OF COLUMBIA

PRELIMINARY STATEMENT

A Treaty of Friendship, Commerce and Navigation has been ratified between the United States and Japan. In advising and consenting to the ratification of this Treaty, the United States Senate made the following reservation:

"Article VIII, Paragraph 2, shall not extend to professions which, because they involve the performance of functions in a public capacity or in the interest of public health and safety, are state-licensed and reserved by statute or constitution exclusively to citizens of the country, and no most-favored-nation clause in the said Treaty shall apply to such professions."

Article VIII, Paragraph 2, of the Treaty, referred to in the above reservation, reads as follows:

"2. Nationals of either Party shall not be barred from practicing the professions within the territories of the other Party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications, residence and competence that are applicable to nationals of such other Party."

Upon the communication of the above reservation to the Japanese Government, it agreed thereto and, on its part, ratified the Treaty subject to a reservation reciprocal to the United States reservation. That reservation, which has been agreed to by the United States, reads as follows;

"Japan reserves the right to impose prohibitions or restrictions on nationals of the United States of America with respect to practicing the professions referred to in Article VIII, paragraph 2, to the same extent as States, Territories or possessions of the United States of America, including the District of Columbia, to which such nationals belong impose prohibitions or restrictions on nationals of Japan with respect to practicing such professions."

Proposals are now being made in Japan that the Lawyers' Law be amended and the law admitting foreign doctors to practice in Japan be amended to provide that only foreign lawyers and doctors will be licensed to practice in Japan if the jurisdiction by which the foreign lawyer and doctor is licensed allows Japanese lawyers or doctors to practice their profession there.

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It is believed that all of the states of the United States require citizenship for the practice of law and that many states require it for the practice of medicine. It is proposed to take action to obtain licenses to practice for a Japanese lawyer and doctor in the District of Columbia. The American lawyers and doctors in Japan could then in turn obtain licenses in the District of Columbia and thereby qualify for practice in Japan even if the Japanese laws pertaining to lawyers and doctors are amended as proposed.

The procedure proposed is for a Japanese lawyer to apply for admission to the District Court of the District of Columbia and for a Japanese doctor to apply to the appropriate authorities in the District of Columbia for a license.

It is believed that the court rules require citizenship for admission to the Bar of the District of Columbia. Upon the denial of these applications—it is assumed that they will be denied—mandamus proceedings would be instituted in the Court of Appeals of the District of Columbia requesting it to issue orders to the Clerk of the District Court or the officer in charge of doctors' licenses to accept the applications.

The Question Involved

The question involved is whether the provisions of the Treaty require the courts and government agencies in the District of Columbia to license to practice law or medicine a Japanese applicant who otherwise satisfies the requirements for a license, even though the District of Columbia laws or regulations require citizenship for the practice of the law or medicine.

P O I N T I

IF THE LANGUAGE OF THE TREATY CONSTITUTES A GUARANTEE BY THE UNITED STATES GOVERNMENT TO JAPANESE CITIZENS OF THE RIGHT TO PRACTICE LAW AND MEDICINE WITHIN THE LIMITS OF THE JURISDICTION OF THE FEDERAL GOVERNMENT, INCLUDING THE DISTRICT OF COLUMBIA, PROVIDED THEY SATISFY THE OTHER REQUIREMENTS FOR A LICENSE, THEN THE TREATY SUPERSEDES ANY REQUIREMENTS OF CITIZENSHIP IMPOSED BY THE DISTRICT OF COLUMBIA.

The Constitution of the United States provides that a Treaty is the supreme law of the land and supersedes any law, either federal or state, inconsistent with it.

(Here the constitutional provision should be quoted and Supreme Court cases setting forth the proposition that a Treaty constitutes the supreme law of the land should be cited.)

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P O I N T I I

THE PROVISIONS OF THE TREATY DO CONSTITUTE A GUARANTEE BY THE UNITED STATES GOVERNMENT TO JAPANESE CITIZENS OF THE RIGHT TO PRACTICE LAW AND MEDICINE WITHIN THE LIMITS OF THE FEDERAL JURISDICTION PROVIDED THEY SATISFY THE OTHER REQUIREMENTS FOR A LICENSE.

It is not necessary to point out that the District of Columbia is not a separate state but is a territory under the exclusive jurisdiction of the United States Government.

A. The Legislative History of this Treaty Makes It Clear that Congress did not Intend to Bar Japanese Citizens from the Practice of Law or Medicine in the United States Generally; on the Contrary, It Intended to Guarantee the Right except in those States where Barred by Constitution or Statute.

The Treaty as originally signed contained an unrestricted guarantee to Japanese citizens that they would not be barred from practicing their professions in the United States merely because of their alienage. In advising and consenting to the ratification of the Treaty, the United States Senate made the reservation quoted above.

The legislative history involved around this provision is replete with language which makes it clear that the intention of the Senate in making the reservation was merely to insure that the Treaty would not abrogate the constitutional rights of the several states to legislate on local matters, and did not include any intention to bar aliens from practicing their professions in the United States.

During the hearings held on July 13, 1953, before the Sub-Committee of the Senate Foreign Relations Committee appointed to consider this and several other commercial treaties, Senator Hickenlooper, the Chairman of the Sub-Committee, made this point clear when he stated (Page 28 of Sub-Committee Hearings):

"I want it clearly understood that the members of the committee who objected to that provision in the Israel Treaty and the Japanese Treaty, are not raising their objection to the practice of the professions by foreign nationals in this country. The objection they raised was that the constitutional provisions and laws of certain States were abrogated. Most of the States in the Union have no citizenship requirement so far as most of the professions are concerned.

Only 13 or 14 States, I forget the exact number, either have a constitutional provision or a statute requiring citizenship in this country as one of the prerequisites to being admitted to the practice of certain professions. Those statutes would of course be abrogated by such treaty.

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It is the desire on the part of the members of the committee, and I am sure on the part of the Senate, to protect the rights of each of our 48 States under their own constitutions to regulate professions which have to do with the public good and health.

I think this reservation adequately protects those matters."

Further, during the discussion of the Treaty on the floor of the Senate, Senator Hickenlooper, who, as Chairman of the Sub-Committee, explained the Treaty to the Senate, stated in connection with this clause (Cong. Rec., 9620, 1953):

"But the principle of these treaties destroying the constitutional limitations of State constitutions is, of course, a question which is very, very controversial. I shall accept my full share of responsibility in this matter, because I am very much opposed to using the device of treaties—I do not mean to say they were being used in this case—to destroy the constitutional prerogatives of individual States or invading to any great degree the rights of the States to legislate within their own boundaries in matters affecting themselves and their own local administration and local affairs.

Great objection was raised by many persons to these provisions. The objection did not go to the extent that an alien should not be permitted to practice professions in this country. That was not part of the objection, because there has been no objection raised, so far as I know, to an alien practicing professions in any State in the United States where there is no prohibition. So the question of alienage in and of itself was not an issue in these treaties. There was a question of the destruction of the constitutional power of certain States or the destruction of their right to legislate in matters of public health and public interest within their States."

In view of the above, it is clear that the Senate had no intention of barring Japanese citizens from practicing law or medicine within the limits of the federal jurisdiction; on the contrary, it intended to, and did, affirmatively guarantee to Japanese citizens the right to practice their professions within the limits of the federal jurisdiction, which, of course, includes the District of Columbia, and within those states which do not, by constitution or statute, bar aliens from the practice of their particular profession.

B. The Rules of Statutory Construction Require that the Treaty be Interpreted to Mean that Japanese Citizens are Guaranteed the Right to Practice Law or Medicine within the District of Columbia.

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1. Article VIII, Paragraph 2, of the Treaty, as quoted above, explicitly and without reservation guarantees that Japanese citizens may practice their professions within the territories of the United States upon compliance with all of the requirements for practice applicable to U. S. citizens. The word "territories" clearly includes all of the states of the United States and all territory under federal jurisdiction, which comprises the District of Columbia.

The only limitation to this guarantee is contained in the reservation quoted above. No mention is made in that reservation of federal territory; only the states are mentioned. It would therefore follow that the guarantee to practice law or medicine in territory under federal jurisdiction, including the District of Columbia, remains.

It may be argued that the language of the reservation should be interpreted as removing the guarantee from certain types of professions in any of the "territories" of the United States, either state or federal, and therefore, if a particular state or federal territory, by statute or constitution, requires citizenship for the practice of one of the classified professions, the guarantee will not apply.

Such an interpretation requires that the words "state-licensed" be broadened by interpretation to mean "state (federal or state)-licensed"; in other words, an interpretation of the word "state" as meaning the general governing jurisdiction and not, in the American constitutional sense, the state as opposed to the federal government. Such an interpretation is totally unwarranted, both by the basic rules of statutory construction and by the legislative history.

The correct interpretation of the language of the reservation is that the guarantee is removed only with respect to those professions which involve the performance of functions in a public capacity or in the interest of public health and safety (law and medicine) and only in those particular states (not federal territories) which reserve the practice of such professions, by constitution or statute, exclusively to U. S. citizens.

Accordingly, even if a federal territory (the District of Columbia, Alaska, Territory of Hawaii, etc.) reserved by statute or constitution the practice of law or medicine to U. S. citizens, Article VIII, Paragraph 2, of the Treaty would supersede such statute or constitution.

2. In any event, assuming (but not admitting) that the reservation should be interpreted to include limitations by federal territories, as well as the several states, of the practice of professions involving the performance of functions in a public capacity or in the interest of

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public health and safety to U. S. citizens, still the reservation would not apply to the practice of law in the District of Columbia, because it is reserved to U. S. citizens by rule of court only, and not by statute or constitution, and the guarantee provided in Article VIII, Paragraph 2, would still apply to a Japanese lawyer desiring to practice in the District of Columbia. The reservation is explicitly limited to reservations by statute or constitution and makes no mention of regulations or rules of court.

(No present information as to whether medical licensing is by statute or regulation.)

C O N C L U S I O N

IN VIEW OF THE ABOVE, THE APPLICATIONS OF A JAPANESE LAWYER AND DOCTOR TO PRACTICE IN THE DISTRICT OF COLUMBIA COULD NOT BE LEGALLY REJECTED SOLELY ON THE GROUND OF ALIENAGE.

Tokyo, August 31, 1953

James B. Anderson

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